

ATTACHMENT 1

H.R.1310

Protection of Civil Liberties Act (Introduced in House)

HR 1310 IH

109th CONGRESS

1st Session

H. R. 1310

To amend the Intelligence Reform and Terrorism Prevention Act of 2004 with respect to the Privacy and Civil Liberties Oversight Board, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

March 15, 2005

Mrs. MALONEY (for herself, Mr. UDALL of New Mexico, Mr. SHAYS, Ms. CARSON, Mr. SANDERS, Mr. CASE, Mr. FILNER, Mr. CUMMINGS, Mr. HONDA, Ms. BALDWIN, Ms. MCCOLLUM of Minnesota, Mr. GEORGE MILLER of California, Mr. PALLONE, Mr. BAIRD, Mr. OWENS, Ms. WOOLSEY, Mr. GONZALEZ, Mrs. DAVIS of California, Mr. ISRAEL, Ms. WATSON, Ms. LEE, Mr. WEXLER, Mr. SCOTT of Virginia, and Mr. VAN HOLLEN) introduced the following bill; which was referred to the Committee on Government Reform, and in addition to the Committees on the Judiciary, Homeland Security, and Select Intelligence (Permanent Select), for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Intelligence Reform and Terrorism Prevention Act of 2004 with respect to the Privacy and Civil Liberties Oversight Board, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the 'Protection of Civil Liberties Act'.

SEC. 2. FINDINGS.

Congress finds the following:

(1) On July 22, 2004 the National Commission on Terrorist Attacks Upon the United States issued a report that included 41 specific recommendations to help prevent future terrorist attacks, including details of a global strategy and government reorganization necessary to implement that strategy.

(2) One of the recommendations focused on the protections of civil liberties. Specifically the following recommendation was made: 'At this time of increased and consolidated government authority, there should be a board within the executive branch to oversee adherence to the guidelines we recommend and the commitment the government makes to defend our civil liberties.'

(3) The report also states that 'the choice between security and liberty is a false choice, as nothing is more likely to endanger America's liberties than the success of a terrorist attack at home. Our History has shown that the insecurity threatens liberty at home. Yet if our liberties are curtailed, we lose the values that we are struggling to defend.'

(4) On December 17, 2004, Public Law 108-458, the National Intelligence Reform Act, was signed into law. This law created a civil liberties board that does not have the authority necessary to protect civil liberties.

SEC. 3. MAKING THE PRIVACY AND CIVIL LIBERTIES OVERSIGHT BOARD INDEPENDENT.

Section 1061(b) of the Intelligence Reform and Terrorism Prevention Act of 2004 is amended by striking 'within the Executive Office of the President' and inserting 'as an independent agency within the Executive branch'.

SEC. 4. REQUIRING ALL MEMBERS OF THE PRIVACY AND CIVIL LIBERTIES OVERSIGHT BOARD BE CONFIRMED BY THE SENATE.

Subsection (e) of section 1061 of the Intelligence Reform and Terrorism Prevention Act of 2004 is amended to read as follows:

'(e) Membership-

'(1) MEMBERS- The Board shall be composed of a full-time chairman and 4 additional members, who shall be appointed by the President, by and with the advice and consent of the Senate.

'(2) QUALIFICATIONS- Members of the Board shall be selected solely on the basis of their professional qualifications, achievements, public stature, expertise in civil liberties and privacy, and relevant experience, and without regard to political affiliation, but in no event shall more than 3 members of the Board be members of the same political party. The President shall, before appointing an individual who is not a member of the same political party as the President consult with the leadership of that party, if any, in the Senate and House of Representatives.

`(3) INCOMPATIBLE OFFICE- An individual appointed to the Board may not, while serving on the Board, be an elected official, officer, or employee of the Federal Government, other than in the capacity as a member of the Board.

`(4) TERM- Each member of the Board shall serve a term of six years, except that--

`(A) a member appointed to a term of office after the commencement of such term may serve under such appointment only for the remainder of such term;

`(B) upon the expiration of the term of office of a member, the member shall continue to serve until the member's successor has been appointed and qualified, except that no member may serve under this subparagraph--

`(i) for more than 60 days when Congress is in session unless a nomination to fill the vacancy shall have been submitted to the Senate; or

`(ii) after the adjournment sine die of the session of the Senate in which such nomination is submitted; and

`(C) the members initially appointed under this subsection shall serve terms of two, three, four, five, and six years, respectively, from the effective date of this Act, with the term of each such member to be designated by the President.

`(5) QUORUM AND MEETINGS- The Board shall meet upon the call of the chairman or a majority of its members. Three members of the Board shall constitute a quorum.'

SEC. 5. SUBPOENA POWER FOR THE PRIVACY AND CIVIL LIBERTIES OVERSIGHT BOARD.

Section 1061(d) of the Intelligence Reform and Terrorism Prevention Act of 2004 is amended--

(1) so that subparagraph (D) of paragraph (1) reads as follows:

`(D) require, by subpoena issued at the direction of a majority of the members of the Board, persons (other than departments, agencies, and elements of the executive branch) to produce any relevant information, documents, reports, answers, records, accounts, papers, and other documentary or testimonial evidence.'; and

(2) so that paragraph (2) reads as follows:

`(2) ENFORCEMENT OF SUBPOENA- In the case of contumacy or failure to obey a subpoena issued under paragraph (1)(D), the United States district court for the judicial district in which the subpoenaed person resides, is served, or may be found may issue an order requiring such person to produce the evidence required by such subpoena.'

SEC. 6. REPORTING REQUIREMENTS.

(a) Duties of Board- Paragraph (4) of section 1061(c) of the Intelligence Reform and Terrorism Prevention Act of 2004 is amended to read as follows:

`(4) REPORTS-

`(A) RECEIPT, REVIEW, AND SUBMISSION-

`(i) IN GENERAL- The Board shall--

`(I) receive and review reports from privacy officers and civil liberties officers described in section 212; and

`(II) periodically submit, not less than semiannually, reports to the appropriate committees of Congress, including the Committees on the Judiciary of the Senate and the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, the Committee on Government Reform of the House of Representatives, the Select Committee on Intelligence of the Senate, and the Permanent Select Committee on Intelligence of the House of Representatives, and to the President.

Such reports shall be in unclassified form to the greatest extent possible, with a classified annex where necessary.

`(ii) CONTENTS- Not less than 2 reports the Board submits each year under clause (i)(II) shall include--

`(I) a description of the major activities of the Board during the preceding period;

`(II) information on the findings, conclusions, and recommendations of the Board resulting from its advice and oversight functions under subsection (c);

`(III) the minority views on any findings, conclusions, and recommendations of the Board resulting from its advice and oversight functions under subsection (c); and

`(IV) each proposal reviewed by the Board under subsection (c)(1) that the Board advised against implementing, but that notwithstanding such advice, was implemented.

`(B) INFORMING THE PUBLIC- The Board shall--

`(i) make its reports, including its reports to Congress, available to the public to the greatest extent that is consistent with the protection of classified information and applicable law; and

`(ii) hold public hearings and otherwise inform the public of its activities, as appropriate and in a manner consistent with the protection of classified information and applicable law.'.

(b) Privacy and Civil Liberties Officers- Section 1062 of the Intelligence Reform and Terrorism Prevention Act of 2004 is amended to read as follows:

SEC. 1062. PRIVACY AND CIVIL LIBERTIES OFFICERS.

(a) Designation and Functions- The Attorney General, the Secretary of Defense, the Secretary of State, the Secretary of the Treasury, the Secretary of Health and Human Services, the Secretary of Homeland Security, the National Intelligence Director, the Director of the Central Intelligence Agency, any other entity within the intelligence community (as defined in section 3 of the National Security Act of 1947 (50 U.S.C. 401a)), and the head of any other department, agency, or element of the executive branch designated by the Privacy and Civil Liberties Oversight Board to be appropriate for coverage under this section shall designate not less than 1 senior officer to--

(1) assist the head of such department, agency, or element and other officials of such department, agency, or element in appropriately considering privacy and civil liberties concerns when such officials are proposing, developing, or implementing laws, regulations, policies, procedures, or guidelines related to efforts to protect the Nation against terrorism;

(2) periodically investigate and review department, agency, or element actions, policies, procedures, guidelines, and related laws and their implementation to ensure that such department, agency, or element is adequately considering privacy and civil liberties in its actions;

(3) ensure that such department, agency, or element has adequate procedures to receive, investigate, respond to, and redress complaints from individuals who allege such department, agency, or element has violated their privacy or civil liberties; and

(4) in providing advice on proposals to retain or enhance a particular governmental power the officer shall consider whether such department, agency, or element has established--

(A) that the power actually enhances security and the need for the power is balanced with the need to protect privacy and civil liberties;

(B) that there is adequate supervision of the use by such department, agency, or element of the power to ensure protection of privacy and civil liberties; and

(C) that there are adequate guidelines and oversight to properly confine its use.

(b) Exception to Designation Authority-

(1) PRIVACY OFFICERS- In any department, agency, or element referred to in subsection (a) or designated by the Board, which has a statutorily created privacy officer, such officer shall perform the functions specified in subsection (a) with respect to privacy.

(2) CIVIL LIBERTIES OFFICERS- In any department, agency, or element referred to in subsection (a) or designated by the Board, which

has a statutorily created civil liberties officer, such officer shall perform the functions specified in subsection (a) with respect to civil liberties.

`(c) Supervision and Coordination- Each privacy officer or civil liberties officer described in subsection (a) or (b) shall--

`(1) report directly to the head of the department, agency, or element concerned; and

`(2) coordinate their activities with the Inspector General of such department, agency, or element to avoid duplication of effort.

`(d) Agency Cooperation- The head of each department, agency, or element shall ensure that each privacy officer and civil liberties officer--

`(1) has the information, material, and resources necessary to fulfill the functions of such officer;

`(2) is advised of proposed policy changes;

`(3) is consulted by decisionmakers; and

`(4) is given access to material and personnel the officer determines to be necessary to carry out the functions of such officer.

`(e) Reprisal for Making Complaint- No action constituting a reprisal, or threat of reprisal, for making a complaint or for disclosing information to a privacy officer or civil liberties officer described in subsection (a) or (b), or to the Privacy and Civil Liberties Oversight Board, that indicates a possible violation of privacy protections or civil liberties in the administration of the programs and operations of the Federal Government relating to efforts to protect the Nation from terrorism shall be taken by any Federal employee in a position to take such action, unless the complaint was made or the information was disclosed with the knowledge that it was false or with willful disregard for its truth or falsity.

`(f) Periodic Reports-

`(1) IN GENERAL- The privacy officers and civil liberties officers of each department, agency, or element referred to or described in subsection (a) or (b) shall periodically, but not less than quarterly, submit a report on the activities of such officers--

`(A)(i) to the appropriate committees of Congress, including the Committees on the Judiciary of the Senate and the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, the Committee on Government Reform of the House of Representatives, the Select Committee on Intelligence of the Senate, and the Permanent Select Committee on Intelligence of the House of Representatives;

`(ii) to the head of such department, agency, or element; and

`(iii) to the Privacy and Civil Liberties Oversight Board; and

`(B) which shall be in unclassified form to the greatest extent possible, with a classified annex where necessary.

`(2) CONTENTS- Each report submitted under paragraph (1) shall include information on the discharge of each of the functions of the officer concerned, including--

`(A) information on the number and types of reviews undertaken;

`(B) the type of advice provided and the response given to such advice;

`(C) the number and nature of the complaints received by the department, agency, or element concerned for alleged violations; and

`(D) a summary of the disposition of such complaints, the reviews and inquiries conducted, and the impact of the activities of such officer.

`(g) Informing the Public- Each privacy officer and civil liberties officer shall--

`(1) make the reports of such officer, including reports to Congress, available to the public to the greatest extent that is consistent with the protection of classified information and applicable law; and

`(2) otherwise inform the public of the activities of such officer, as appropriate and in a manner consistent with the protection of classified information and applicable law.

`(h) Savings Clause- Nothing in this section shall be construed to limit or otherwise supplant any other authorities or responsibilities provided by law to privacy officers or civil liberties officers.

`(i) Protections for Human Research Subjects- The Secretary of Homeland Security shall ensure that the Department of Homeland Security complies with the protections for human research subjects, as described in part 46 of title 45, Code of Federal Regulations, or in equivalent regulations as promulgated by such Secretary, with respect to research that is conducted or supported by such Department.'.

ATTACHMENT 2

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H.R.5000

9/11 Commission Civil Liberties Board Act (Introduced in House)

HR 5000 IH

109th CONGRESS

2d Session

H. R. 5000

To amend the Intelligence Reform and Terrorism Prevention Act of 2004 with respect to the Privacy and Civil Liberties Oversight Board, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

March 16, 2006

Mr. SHAYS (for himself, Mrs. MALONEY, Mr. UDALL of New Mexico, Mr. CASE, Mr. OWENS, Mr. STARK, and Mr. THOMPSON of Mississippi) introduced the following bill; which was referred to the Committee on Government Reform, and in addition to the Committees on the Budget, Judiciary, Homeland Security, and Select Intelligence (Permanent Select), for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Intelligence Reform and Terrorism Prevention Act of 2004 with respect to the Privacy and Civil Liberties Oversight Board, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the '9/11 Commission Civil Liberties Board Act'.

SEC. 2. FINDINGS.

Congress finds the following:

- (1) On July 22, 2004 the National Commission on Terrorist Attacks Upon the United States (also known as the 9/11 Commission) issued a report that included 41 specific recommendations to help prevent future terrorist

attacks, including details of a global strategy and government reorganization necessary to implement that strategy.

(2) One of the recommendations focused on the protections of civil liberties. Specifically the following recommendation was made: 'At this time of increased and consolidated government authority, there should be a board within the executive branch to oversee adherence to the guidelines we recommend and the commitment the government makes to defend our civil liberties.'

(3) The report also states that 'the choice between security and liberty is a false choice, as nothing is more likely to endanger America's liberties than the success of a terrorist attack at home. Our History has shown that the insecurity threatens liberty at home. Yet if our liberties are curtailed, we lose the values that we are struggling to defend.'

(4) On December 17, 2004, Public Law 108-458, the National Intelligence Reform Act, was signed into law. This law created a civil liberties board that does not have the authority necessary to protect civil liberties.

(5) The establishment and adequate funding of a Privacy and Civil Liberties Oversight Board was a crucial recommendation made by the 9/11 Commission.

(6) In its Final Report on 9/11 Commission Recommendations, the Commission noted 'very little urgency' and 'insufficient' funding as it relates to the establishment of the Privacy and Civil Liberties Oversight Board.

(7) While the President's budget submission for fiscal year 2006 included \$750,000 for the Privacy and Civil Liberties Oversight Board, the President's budget submission for fiscal year 2007 does not contain a funding line for the Board.

SEC. 3. MAKING THE PRIVACY AND CIVIL LIBERTIES OVERSIGHT BOARD INDEPENDENT.

Section 1061(b) of the Intelligence Reform and Terrorism Prevention Act of 2004 is amended by striking 'within the Executive Office of the President' and inserting 'as an independent agency within the Executive branch'.

SEC. 4. REQUIRING ALL MEMBERS OF THE PRIVACY AND CIVIL LIBERTIES OVERSIGHT BOARD BE CONFIRMED BY THE SENATE.

Subsection (e) of section 1061 of the Intelligence Reform and Terrorism Prevention Act of 2004 is amended to read as follows:

'(e) Membership-

'(1) MEMBERS- The Board shall be composed of a full-time chairman and 4 additional members, who shall be appointed by the President, by and with the advice and consent of the Senate.

`(2) QUALIFICATIONS- Members of the Board shall be selected solely on the basis of their professional qualifications, achievements, public stature, expertise in civil liberties and privacy, and relevant experience, and without regard to political affiliation, but in no event shall more than 3 members of the Board be members of the same political party. The President shall, before appointing an individual who is not a member of the same political party as the President consult with the leadership of that party, if any, in the Senate and House of Representatives.

`(3) INCOMPATIBLE OFFICE- An individual appointed to the Board may not, while serving on the Board, be an elected official, officer, or employee of the Federal Government, other than in the capacity as a member of the Board.

`(4) TERM- Each member of the Board shall serve a term of six years, except that--

`(A) a member appointed to a term of office after the commencement of such term may serve under such appointment only for the remainder of such term;

`(B) upon the expiration of the term of office of a member, the member shall continue to serve until the member's successor has been appointed and qualified, except that no member may serve under this subparagraph--

`(i) for more than 60 days when Congress is in session unless a nomination to fill the vacancy shall have been submitted to the Senate; or

`(ii) after the adjournment sine die of the session of the Senate in which such nomination is submitted; and

`(C) the members initially appointed under this subsection shall serve terms of two, three, four, five, and six years, respectively, from the effective date of this Act, with the term of each such member to be designated by the President.

`(5) QUORUM AND MEETINGS- The Board shall meet upon the call of the chairman or a majority of its members. Three members of the Board shall constitute a quorum.'.

SEC. 5. SUBPOENA POWER FOR THE PRIVACY AND CIVIL LIBERTIES OVERSIGHT BOARD.

Section 1061(d) of the Intelligence Reform and Terrorism Prevention Act of 2004 is amended--

(1) so that subparagraph (D) of paragraph (1) reads as follows:

`(D) require, by subpoena issued at the direction of a majority of the members of the Board, persons (other than departments, agencies, and elements of the executive branch) to produce any relevant information, documents, reports, answers, records, accounts, papers, and other documentary or testimonial evidence.'; and

(2) so that paragraph (2) reads as follows:

`(2) ENFORCEMENT OF SUBPOENA- In the case of contumacy or failure to obey a subpoena issued under paragraph (1)(D), the United States district court for the judicial district in which the subpoenaed person resides, is served, or may be found may issue an order requiring such person to produce the evidence required by such subpoena.'

SEC. 6. REPORTING REQUIREMENTS.

(a) Duties of Board- Paragraph (4) of section 1061(c) of the Intelligence Reform and Terrorism Prevention Act of 2004 is amended to read as follows:

`(4) REPORTS-

`(A) RECEIPT, REVIEW, AND SUBMISSION-

`(i) IN GENERAL- The Board shall--

`(I) receive and review reports from privacy officers and civil liberties officers described in section 212; and

`(II) periodically submit, not less than semiannually, reports to the appropriate committees of Congress, including the Committees on the Judiciary of the Senate and the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, the Committee on Government Reform of the House of Representatives, the Select Committee on Intelligence of the Senate, and the Permanent Select Committee on Intelligence of the House of Representatives, and to the President.

Such reports shall be in unclassified form to the greatest extent possible, with a classified annex where necessary.

`(ii) CONTENTS- Not less than 2 reports the Board submits each year under clause (i)(II) shall include--

`(I) a description of the major activities of the Board during the preceding period;

`(II) information on the findings, conclusions, and recommendations of the Board resulting from its advice and oversight functions under subsection (c);

`(III) the minority views on any findings, conclusions, and recommendations of the Board resulting from its advice and oversight functions under subsection (c); and

`(IV) each proposal reviewed by the Board under subsection (c)(1) that the Board advised against implementing, but that notwithstanding such advice, was implemented.

`(B) INFORMING THE PUBLIC- The Board shall--

- `(i) make its reports, including its reports to Congress, available to the public to the greatest extent that is consistent with the protection of classified information and applicable law; and
- `(ii) hold public hearings and otherwise inform the public of its activities, as appropriate and in a manner consistent with the protection of classified information and applicable law.'.

(b) Privacy and Civil Liberties Officers- Section 1062 of the Intelligence Reform and Terrorism Prevention Act of 2004 is amended to read as follows:

`SEC. 1062. PRIVACY AND CIVIL LIBERTIES OFFICERS.

`(a) Designation and Functions- The Attorney General, the Secretary of Defense, the Secretary of State, the Secretary of the Treasury, the Secretary of Health and Human Services, the Secretary of Homeland Security, the National Intelligence Director, the Director of the Central Intelligence Agency, any other entity within the intelligence community (as defined in section 3 of the National Security Act of 1947 (50 U.S.C. 401a)), and the head of any other department, agency, or element of the executive branch designated by the Privacy and Civil Liberties Oversight Board to be appropriate for coverage under this section shall designate not less than 1 senior officer to--

`(1) assist the head of such department, agency, or element and other officials of such department, agency, or element in appropriately considering privacy and civil liberties concerns when such officials are proposing, developing, or implementing laws, regulations, policies, procedures, or guidelines related to efforts to protect the Nation against terrorism;

`(2) periodically investigate and review department, agency, or element actions, policies, procedures, guidelines, and related laws and their implementation to ensure that such department, agency, or element is adequately considering privacy and civil liberties in its actions;

`(3) ensure that such department, agency, or element has adequate procedures to receive, investigate, respond to, and redress complaints from individuals who allege such department, agency, or element has violated their privacy or civil liberties; and

`(4) in providing advice on proposals to retain or enhance a particular governmental power the officer shall consider whether such department, agency, or element has established--

`(A) that the power actually enhances security and the need for the power is balanced with the need to protect privacy and civil liberties;

`(B) that there is adequate supervision of the use by such department, agency, or element of the power to ensure protection of privacy and civil liberties; and

`(C) that there are adequate guidelines and oversight to properly confine its use.

`(b) Exception to Designation Authority-

`(1) PRIVACY OFFICERS- In any department, agency, or element referred to in subsection (a) or designated by the Board, which has a statutorily created privacy officer, such officer shall perform the functions specified in subsection (a) with respect to privacy.

`(2) CIVIL LIBERTIES OFFICERS- In any department, agency, or element referred to in subsection (a) or designated by the Board, which has a statutorily created civil liberties officer, such officer shall perform the functions specified in subsection (a) with respect to civil liberties.

`(c) Supervision and Coordination- Each privacy officer or civil liberties officer described in subsection (a) or (b) shall--

`(1) report directly to the head of the department, agency, or element concerned; and

`(2) coordinate their activities with the Inspector General of such department, agency, or element to avoid duplication of effort.

`(d) Agency Cooperation- The head of each department, agency, or element shall ensure that each privacy officer and civil liberties officer--

`(1) has the information, material, and resources necessary to fulfill the functions of such officer;

`(2) is advised of proposed policy changes;

`(3) is consulted by decisionmakers; and

`(4) is given access to material and personnel the officer determines to be necessary to carry out the functions of such officer.

`(e) Reprisal for Making Complaint- No action constituting a reprisal, or threat of reprisal, for making a complaint or for disclosing information to a privacy officer or civil liberties officer described in subsection (a) or (b), or to the Privacy and Civil Liberties Oversight Board, that indicates a possible violation of privacy protections or civil liberties in the administration of the programs and operations of the Federal Government relating to efforts to protect the Nation from terrorism shall be taken by any Federal employee in a position to take such action, unless the complaint was made or the information was disclosed with the knowledge that it was false or with willful disregard for its truth or falsity.

`(f) Periodic Reports-

`(1) IN GENERAL- The privacy officers and civil liberties officers of each department, agency, or element referred to or described in subsection (a) or (b) shall periodically, but not less than quarterly, submit a report on the activities of such officers--

`(A)(i) to the appropriate committees of Congress, including the Committees on the Judiciary of the Senate and the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, the Committee on Government Reform of the House of Representatives, the Select Committee on Intelligence of the Senate, and the Permanent Select Committee on Intelligence of the House of Representatives;

ATTACHMENT 3

Congress of the United States
Washington, DC 20515

March 21, 2006

***Demanding a Stronger, Well-Funded
Privacy and Civil Liberties Board***

9/11 Commission Privacy and Civil Liberties Board Act

Cosponsor H.R. 5000

Dear Colleague:

The establishment and adequate funding of a Privacy and Civil Liberties Oversight Board was a crucial recommendation made by the 9/11 Commission. In 2004, the 9/11 Commission Report was used as a framework for the Intelligence Reform and Terrorism Prevention Act (PL 108-458), which reorganized our nation's intelligence systems and established a Privacy and Civil Liberties Board.

The 9/11 Report also states that "the choice between security and liberty is a false choice, as nothing is more likely to endanger America's liberties than the success of a terrorist attack at home. Yet if our liberties are curtailed, we lose the values that we are struggling to defend."

In its Final Report on 9/11 Commission Recommendations released December 5, 2005, the Commission noted "**very little urgency**" and "**insufficient**" funding as it relates to the establishment of the Board. Commission board member Richard Ben-Veniste recently reaffirmed the Commission's disappointment in the Board:

"It needs to have a budget commensurate with the importance of its mission. Its powers are nonexistent, and its independence is questionable."

While the President's budget submission for Fiscal Year 2006 included \$750,000 and a Shays/Maloney/Udall amendment later increased funding for the Privacy and Civil Liberties Oversight Board to \$1,500,000, the **President's budget submission for Fiscal Year 2007 does not contain a funding line for the Board.**


A robust Board with a qualified staff and adequate funding is an important step towards protecting civil liberties. **H.R. 5000** builds on the *Protection of Civil Liberties Act*, introduced by Congresswoman Maloney and Congressman Shays, and **would require that the President's annual budget contain a specific funding line for the Board.**


The *9-11 Commission Civil Liberties Board Act* also:

- Gives the Privacy and Civil Liberties Oversight Board subpoena power; and
- Creates the Board as an independent agency in the executive branch; and
- Requires that all five members of the Board be Senate-confirmed and the make-up of the Board to be bipartisan; and
- Ensures the Board regularly reports to Congress; and
- Places Privacy and Civil Liberties Officers in every executive department or agency with law enforcement or antiterrorism functions.

To cosponsor this legislation or for more information, please do not hesitate to contact Brian Moran in Rep. Shays' office at 5-5541 or brian.moran@mail.house.gov or Edward Mills in Rep. Maloney's office at 5-7944 or edward.mills@mail.house.gov.

Sincerely,


Christopher Shays
Member of Congress


Carolyn B. Maloney
Member of Congress

ATTACHMENT 4

May 11, 2006

Complete the Implementation of the 9/11 Commission Recommendations

Co-Sponsor H.R. 5017

Dear Colleague:

On December 5, 2005, the 9-11 Commission released a report card on the status of the implementation of its 41 recommendations. **The report card contained more F's than A's.**

Because the full implementation of all 41 recommendations must remain a top priority for our government, we have introduced **H.R. 5017, the Ensuring Implementation of the 9/11 Commission Report Act.**

H.R. 5017 would **require executive branch agencies to report on their progress toward implementing statements of policy made by the 9/11 Commission** and outlined in Public Law (P.L.) 108-458, the Intelligence Reform and Terrorism Prevention Act.

Homeland Security and Emergency Response

- Requires the distribution of homeland security funding on a risk-basis.
- Uses language of the HERO Act to provide first responders with the communication equipment and infrastructure they need to communicate.
- Requires the executive branch to report on the implementation of the P.L.108-458 with regards to improvements in government and private sector emergency preparedness, identifying national infrastructure for risk and vulnerability, and enhancements to transportation and border security.

Intelligence and Congressional Reform

- Includes H.R. 5000, the 9/11 Commission Civil Liberties Board Act, which strengthens the Privacy and Civil Liberties Board established in P.L.108-458.
- Implements recommendations for the enhancement of congressional oversight and changes to jurisdiction in the Intelligence and Appropriations committees.
- Requires the declassification of the top-line intelligence budget.
- Requires the executive branch to report on the implementation of the parts of P.L.108-458 dealing with reforms to the intelligence community.

Foreign Policy, Public Diplomacy and Nonproliferation

- Recommends specific initiatives to further enhance U.S. relations with Afghanistan, Pakistan, and Saudi Arabia.
- Requires identification of Terrorist Sanctuaries and demands a coalition strategy in the fight against Islamist terrorism.
- Requests use of economic policies to combat terrorism and to fight terrorist financing.
- Ensures proper diplomacy training for Department of State and Foreign Service officials.
- Supports expansion of scholarship, exchange, and library programs in the Islamic world.
- Uses language of the Omnibus Nonproliferation and Anti-Nuclear Terrorism Act to establish an

ATTACHMENT 5

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Final Report on 9/11 Commission Recommendations ♦ December 5, 2005

HOMELAND SECURITY AND EMERGENCY RESPONSE			INTELLIGENCE AND CONGRESSIONAL REFORM		FOREIGN POLICY AND NONPROLIFERATION	
Radio spectrum for first responders	F/C*		Director of National Intelligence	B	Maximum effort to prevent terrorists from acquiring WMD	D
Incident Command System	C		National Counterterrorism Center	B	Afghanistan	B
Risk-based homeland security funds	F/A*		FBI national security workforce	C	Pakistan	C+
Critical infrastructure assessment	D		New missions for CIA Director	I	Saudi Arabia	D
Private sector preparedness	C		Incentives for information sharing	D	Terrorist sanctuaries	B
National Strategy for Transportation Security	C-		Government-wide information sharing	D	Coalition strategy against Islamist terrorism	C
Airline passenger pre-screening	F		Northern Command planning for homeland defense	B-	Coalition detention standards	F
Airline passenger explosive screening	C		Full debate on PATRIOT Act	B	Economic policies	B+
Checked bag and cargo screening	D		Privacy and Civil Liberties Oversight Board	D	Terrorist financing	A-
Terrorist travel strategy	I		Guidelines for government sharing of personal information	D	Clear U.S. message abroad	C
Comprehensive screening system	C		Intelligence oversight reform	D	International broadcasting	B
Biometric entry-exit screening system	B		Homeland Security Committees	B	Scholarship, exchange, and library programs	D
International collaboration on borders and document security	D		Unclassified top-line intelligence budget	F	Secular education in Muslim countries	D
Standardize secure identifications	B-		Security clearance reform	B		

* If pending legislation passes

ATTACHMENT 6

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Watchdog: What Ever Happened to the Civil Liberties Board?

Michael Isikoff

444 words

13 March 2006

Newsweek

U.S. Edition

English

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For more than a year, the Privacy and Civil Liberties Oversight Board has been the most invisible office in the White House. Created by Congress in December 2004 as a result of the recommendations of the 9/11 Commission, the board has never hired a staff or even held a meeting. Next week, NEWSWEEK has learned, that is due to finally change when the board's five members are slated to be sworn in at the White House and convene their first session. Board members tell NEWSWEEK the panel intends to immediately tackle contentious issues like the president's domestic wiretapping program, the Patriot Act and Pentagon data mining. But critics are furious the process has taken this long--and question whether the White House intends to treat the panel as anything more than window dressing. The delay is "outrageous, considering how long it's been since the bill [creating the board] was passed," said Thomas Kean, who chaired the 9/11 Commission. "The administration was never interested in this."

Renewed concerns about the White House's commitment came just a few weeks ago when President Bush's new budget was released--with no listing for money for the civil liberties board. Alex Conant, a spokesman for the Office of Management and Budget, denied to NEWSWEEK the White House was trying to kill the panel by starving it of funds. "It will be fully funded," he said, explaining that the board wasn't in the budget this year because officials decided not to itemize funding levels for particular offices within the White House. When a reporter pointed out that funding for other White House offices such as the National Security Council were listed in the budget, Conant said: "I have no explanation."

The funding snafu is only the latest setback. Kean said the 9/11 Commission had pushed hard for the board to ensure that some agency within the government would specifically review potential abuses at a time vastly expanded powers were being given to U.S. intel and law-enforcement agencies. But the White House, and congressional leaders, resisted and sharply restricted its scope, denying the board basic tools like subpoena power. Bush didn't nominate members of the board until June 2005--six months after the panel was created--and they weren't confirmed until last month. The chair of the board is **Carol Dinkins**, a former senior Justice official under Ronald Reagan and former law partner of Attorney General Alberto Gonzales. Dinkins did not respond to requests for comment.

Outrageous: Kean has been frustrated by the response to commission recommendations

Document NSWK000020060306e23d0000k

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ATTACHMENT 7

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Privacy Board Inspired by 9/11 Commission May Be Underfunded, Neglected

Patrick Yoest, CQ Staff

17 March 2006

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A key government-wide privacy board spurred by the 9/11 Commission held its first meeting this week, but some members of Congress say it is underfunded and lacks priority in the Bush administration.

The Privacy and Civil Liberties Oversight Board -- a recommendation of the 9/11 Commission -- was established in the 2004 Intelligence Reform Act (PL 108-458).

But chairwoman Carol Dinkins and vice chairman Alan Raul were confirmed only last month, after a long delay in nominating them, and a subsequent wait for their approval from the Senate Judiciary Committee and the full Senate. The 9/ 11 Public Disclosure Project, composed of members of the 9/11 Commission, issued a "D" for the implementation of the recommendation, citing "little urgency in the creation of this board," and a lack of funding and staff.

The White House's proposed budget for fiscal 2007 did not include any mention of the board, but OMB says that only means it has been subsumed into the larger White House budget.

"The Board's needs will be covered within the annual White House appropriation, as they were last year, and they will be fully funded," said OMB spokesman Alex Conant.

This year's budget for the board stands at \$1.5 million but it is not clear what the White House would allocate for the office without a line item. The Department of Homeland Security's privacy office, by comparison, received \$13 million in funding this year.

Rep. Christopher Shays, R-Conn., introduced legislation March 16 to make the Privacy and Civil Liberties Oversight Board an independent agency within the Executive Office of the President, which would give the board its own line item.

In a statement, Shays called for a number of strengthening provisions that the bill's supporters contend were taken out of the intelligence reform act in conference.

"A robust **Civil Liberties Board** with a qualified staff and adequate funding is an important step towards protecting civil liberties," Shays said. "The bill we are introducing today does just that."

Other measures in the bill (HR 5000), which is cosponsored by Reps. Carolyn B. Maloney, D-N.Y., and Tom Udall, D-N.M., include the provision of subpoena power for the board, a reporting requirement to Congress and a requirement that all five members of the board -- not just the chairman and vice chairman -- receive confirmation by the Senate.

9/11 Commission board member Richard Ben-Veniste said in a telephone interview Friday that the board had disappointed him almost from the very beginning.

"It needs to have a budget commensurate with the importance of its mission," Ben-Veniste said. "Its powers are nonexistent, and its independence is questionable."

Only one of its members -- Lanny Davis, a White House counsel to President Bill Clinton -- is known to be a Democrat, which Ben-Veniste cites as a problem, along with a lack of members with civil liberties bona fides.

Shays' bill would stipulate that no more than three members of the board could belong to the same political party, and that all members have "prior experience with protecting civil liberties."

Patrick Yoest can be reached at pyoest@cq.com.

ATTACHMENT 8

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Mon, Apr. 24, 2006

CIVIL LIBERTIES

Oversight board needs authority, resources

By DAVID KEENE and DAVID COLE
cole@law.georgetown.edu

The Bush administration has argued that the president has the "inherent power" in the "war on terror" to choose "the means and methods of engaging the enemy" free of any concerns about the political checks of the other branches -- even when that includes wiretapping Americans at home without a warrant and in violation of existing criminal law. That position is contrary to constitutional principle and precedent. The framers of the Constitution were skeptical of claims of absolute power and tied our fate instead to an intricate system of checks and balances.

The fact that the administration takes such a view of its own prerogatives, however, underscores the importance of having a system of checks and balances within the executive branch itself. Internal checks are especially important where, as was the case with the National Security Agency's spying program, the executive carries out initiatives in secret, and the American public only learns about them, if at all, through unauthorized leaks to the press.

The 9/11 Commission saw the need for such internal oversight and in December 2004 Congress passed legislation creating a Privacy and Civil Liberties Oversight Board, a five-member panel with jurisdiction to review executive branch policies, regulations and programs on national security to ensure that they safeguard Americans' privacy rights and civil liberties. It has taken 15 months, however, just to get the board up and running.

Subpoena power

The administration didn't even nominate the members of the board until last June, six months after passage of the legislation, and the members weren't sworn in until just last month.

More importantly, while the legislation creating the civil liberties board recognized the need for internal oversight, it was deficient in some important respects. The board lacks subpoena power. It is not independent but is contained within the Executive Office of the President. There is no requirement that it be bipartisan. Executive branch officials are not required to seek the board's approval before implementing policies that may infringe civil liberties. And the board has been woefully underfunded.

Reps. Carolyn Maione, D-N.Y., and Christopher Shays, R-Conn., have introduced bipartisan legislation to cure these deficiencies and "give teeth" to the board, but thus far no action has been taken on that front.

Many issues have arisen since 9/11 that could have been submitted to a real civil liberties board. They range from the NSA warrantless surveillance program to the use of watch lists in screening airline passengers to the government's treatment of detainees at Guantánamo Bay. An independent civil liberties board with real authority could play a valuable role in the debate over how to keep us both safe and free.

As co-chairs of the Constitution Project's bipartisan Liberty and Security Initiative, we have been working with a diverse group of prominent Americans -- including Democrats, Republicans and independents, with experience in all three branches of government, academia, the media, and business -- to forge consensus on how our government can simultaneously protect Americans' security and their civil liberties.

New legislation

We believe that the civil liberties board has been far too long in coming, but now that it is in place, the Congress and the president should work together to make certain that it has the resources and power to accomplish its mission. The only thing worse than no civil liberties board would be a sham civil liberties

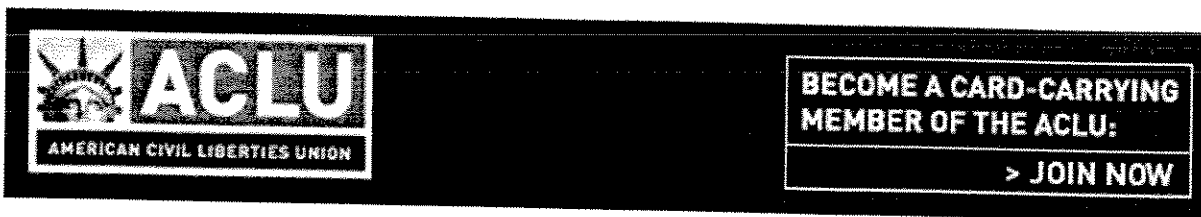
board.

Congress and the administration can rectify this situation. Congress should pass, and the president should sign, new legislation to strengthen the board's hand while rendering it truly independent. Security and liberty are critical bipartisan issues for our nation, and we must make it a priority to address them through a functioning, independent and bipartisan board.

David Keene is chairman of the American Conservative Union. David Cole is a professor of law at Georgetown University Law Center and a legal affairs correspondent for The Nation.

ATTACHMENT 9

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URL: <http://www.aclu.org/safefree/general/25380prs20060427.html>

ACLU Leaders Meet with White House Privacy and Civil Liberties Board, Call for Board to Exercise Strong, Independent Role (4/27/2006)

FOR IMMEDIATE RELEASE

Contact: Media@dcacclu.org

WASHINGTON - Key leaders from the American Civil Liberties Union today met with the White House Privacy and Civil Liberties Oversight Board in order to encourage that panel to conduct aggressive investigation and oversight over several matters of pivotal importance to the civil liberties of all Americans.

"We appreciate the board's willingness to meet with us in a welcome first step," said Anthony D. Romero, ACLU Executive Director. "But one meeting after 17 months of the board's inactivity should not be celebrated as protecting civil liberties. Many questions remain about the board's independence and their effectiveness."

Romero and Caroline Fredrickson, Director of the ACLU Washington Legislative Office, met with Chairman Carol Dinkins, Vice Chairman Alan Raul and Executive Director Mark Robbins this morning at the White House.

In today's meeting, the ACLU urged the board to take the following steps to ensure openness and accountability:

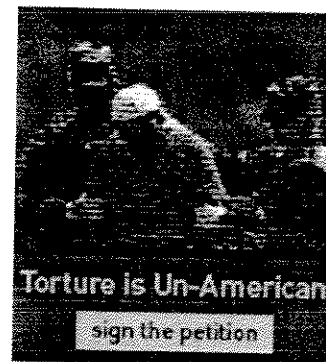
- Hold public hearings and issue public reports, along the model of the 9/11 Commission, to increase awareness of the important privacy and civil liberties issues raised by new government anti-terrorism efforts;
- Review whether federal agencies working to combat terrorism are targeting innocent citizens or other lawful residents. The ACLU leaders pointed specifically to the warrantless eavesdropping by the National Security Agency;
- Examine the implications for individuals and the government of the proliferation and management of watch lists, the growing number of names on watch lists, and the constitutional and legal implications of being placed on such a list; and
- Advise the president regarding the legality and propriety of permitting government agencies to contract with private companies to engage in eavesdropping and data mining that the government could not do on its own due to technological and legal barriers.

The board was created on December 17, 2004, when President Bush signed into law the Intelligence Reform and Terrorism Prevention Act of 2004. However, since its creation, the administration has done little to actually implement the launch of the board, with members not appointed until June 10, 2005. The ACLU noted that the White House also failed to include specific funding for the board in its budget for 2007.

The initial call for the board was part of the 9/11 Commission's report; which found that: "At this time of increased and consolidated government authority, there should be a board within the executive branch to oversee adherence to the guidelines we recommend and the commitment the government makes to defend our civil liberties."

The ACLU has been critical of the board because its members are appointed by the incumbent president and serve at the President's pleasure and because its powers to obtain documents and testimony are subject to a veto by the Attorney General.

"The board has an opportunity to show that it is not in the pocket of the president and is truly concerned with the liberty and privacy of the American people," said Fredrickson. "Given the ever-growing expansion of the government's law enforcement powers, effective oversight is absolutely essential. We hope that the board will provide real oversight, and not simply the illusion."

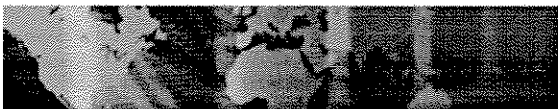


> [Report to the UN Committee Against Torture](#)

> [Government Torture and Abuse](#)

ATTACHMENT 10

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Civil Liberties and National Security

By George Friedman

USA Today published a story last week stating that U.S. telephone companies (Qwest excepted) had been handing over to the National Security Agency (NSA) logs of phone calls made by American citizens. This has, as one might expect, generated a fair bit of controversy -- with opinions ranging from "It's not only legal but a great idea" to "This proves that Bush arranged 9/11 so he could create a police state." A fine time is being had by all. Therefore, it would seem appropriate to pause and consider the matter.

Let's begin with an obvious question: How in God's name did USA Today find out about a program that had to have been among the most closely held secrets in the intelligence community -- not only because it would be embarrassing if discovered, but also because the entire program could work only if no one knew it was under way? No criticism of USA Today, but we would assume that the newspaper wasn't running covert operations against the NSA. Therefore, someone gave them the story, and whoever gave them the story had to be cleared to know about it. That means that someone with a high security clearance leaked an NSA secret.

Americans have become so numbed to leaks at this point that no one really has discussed the implications of what we are seeing: The intelligence community is hemorrhaging classified information. It's possible that this leak came from one of the few congressmen or senators or staffers on oversight committees who had been briefed on this material -- but either way, we are seeing an extraordinary breakdown among those with access to classified material.

The reason for this latest disclosure is obviously the nomination of Gen. Michael Hayden to be the head of the CIA. Before his appointment as deputy director of national intelligence, Hayden had been the head of the NSA, where he oversaw the collection and data-mining project involving private phone calls. Hayden's nomination to the CIA has come under heavy criticism from Democrats and Republicans, who argue that he is an inappropriate choice for director. The release of the data-mining story to USA Today

two schools: those who regard the threat to liberty as trivial when compared to the security it provides, and those who regard the security it provides as trivial when compared to the threat to liberty. In this, each side is being dishonest. The real answer, we believe, is that the program does substantially improve security, and that it is a clear threat to liberty. People talk about hard choices all the time; with this program, Americans actually are facing one.

A Problem of Governments

Let's begin with the liberty question. There is no way that a government program designed to track phone calls made by Americans is not a threat to liberty. We are not lawyers, and we are sure a good lawyer could make the argument either way. But whatever the law says, liberty means "my right to do what I want, within the law and due process, without the government having any knowledge of it." This program violates that concept.

The core problem is that it is never clear what the government will do with the data it collects.

Consider two examples, involving two presidential administrations.

In 1970, Congress passed legislation called the Racketeer-Influenced and Corrupt Organizations (RICO) Act that was designed explicitly to break organized crime groups. The special legislation was needed because organized crime groups were skilled at making more conventional prosecutions difficult. The Clinton administration used the RICO Act against anti-abortion activists. From a legal point of view, this was effective, but no one had ever envisioned the law being used this way when it was drafted. The government was taking the law to a place where its framers had never intended it to go.

Following 9/11, Congress passed a range of anti-terrorism laws that included the PATRIOT Act. The purpose of this was to stop al Qaeda, an organization that had killed thousands of people and was thought to be capable of plotting a nuclear attack. Under the same laws, the Bush administration has been monitoring a range of American left-wing groups -- some of which well might have committed acts of violence, but none of which come close to posing the same level of threat as al Qaeda. In some technical sense, using anti-terrorism laws against animal-rights activists might be legitimate, but the framers of the law did not envision this extension.

It is not that these things shouldn't be stopped. Rather, the issue is that Americans have decided that such crimes must be stopped within a rigorous system of due process. The United States was founded on the premise that governments can be as dangerous as criminals. The entire premise of the American system is that governments are necessary evils and that their powers must be circumscribed. Americans accept that some criminals will go free, but they still limit the authority of the state to intrude in their lives. There is a belief that if you give government an inch, it will take a mile -- all in the name of the public interest.

Now flip the analysis. Americans can live with child molesters, deadbeat dads and stolen car rings more readily than they can live with the dangers inherent in government power. But can one live with the threat from al Qaeda more readily than that from government power? That is the crucial question that must be answered. Does al Qaeda pose a threat that (a) cannot be managed within the structure of normal due process and (b) is so enormous that it requires an extension of government power? In the long run, is increased government power more or less dangerous than al Qaeda?

Due Process and Security Risks

We don't mean to be ironic when we say this is a tough call. If all that al Qaeda can do was what they achieved on 9/11, we might be tempted to say that society could live more readily with that threat than with the threat of government oppression. But there is no reason to believe that the totality of al Qaeda's capabilities and that of its spin-off groups was encapsulated in the 9/11 attacks. The possibility that al Qaeda might acquire and use weapons of mass destruction, including nuclear devices, cannot be completely dismissed. There is no question but that the organization would use such weapons if they could. The possibility of several American cities being devastated by nuclear attacks is conceivable - - and if there is only one chance in 100 of such an event, that is too much. The fact is that no one knows what the probabilities are.

Some of those who write to Stratfor argue that the Bush administration carried out the 9/11 attacks to justify increasing its power. But if the administration was powerful enough to carry out 9/11 without anyone finding out, then it hardly seems likely that it needed a justification for oppression. It could just oppress. The fact is that al Qaeda (which claims the attacks) carried out the attacks, and that attacks by other groups are possible. They might be nuclear attacks -- and stopping those is a social and moral imperative that might not be possible without a curtailment of liberty.

of the premises of American conservatism is that power corrupts, and absolute power corrupts absolutely. Conservatives believe that the state -- and particularly the federal government -- should never be trusted with power. Conservatives believe in "original sin," meaning they believe that any ruler not only is capable of corruption, but likely to be corrupted by power. The entire purpose of the American regime is to protect citizens from a state that is, by definition, untrustworthy. The Bush administration moves past this tough part real fast as well.

Tough Discussions

It is important to consider what the NSA's phone call monitoring program was intended to do. Al Qaeda's great skill has been using a very small number of men, allowing them to blend into a targeted country, and then suddenly bringing them together for an attack. Al Qaeda's command cell has always been difficult to penetrate; it consists of men who are related or who have known each other for years. They do not recruit new members into the original structure. Penetrating the organization is difficult. Moreover, the command cell may not know details of any particular operation in the field.

Human intelligence, in order to be effective, must be focused. As we say at Stratfor, we need a name, a picture and an address for the person who is likely to know the answer to an intelligence question. For al Qaeda's operations in the United States, we do not have any of this. The purpose of the data-mining program simply would have been to identify possible names and addresses so that a picture could be pieced together and an intelligence operation mounted. The program was designed to identify complex patterns of phone calls and link the information to things already known from other sources, in order to locate possible al Qaeda networks.

In order to avoid violating civil liberties, a warrant for monitoring phone calls would be needed. It is impossible to get a warrant for such a project, however, unless you want to get a warrant for every American. The purpose of a warrant is to investigate a known suspect. In this case, the government had no known suspect. Identifying a suspect is exactly what this was about. The NSA was looking for 10 or 20 needles in a haystack of almost 300 million. The data-mining program would not be a particularly effective program by itself -- it undoubtedly would have thrown out more false positives than anyone could follow up on. But in a conflict in which there are no good tools, this was a tool that had some utility. For all we know, a cell might have been located, or the program might never have been more than a waste of time.

history. During the Civil War -- another war that was unique and that was waged on American soil -- the North was torn by dissent. Pro-Confederate sentiment ran deep in the border states that remained within the Union, as well as in other states. The federal government, under Lincoln, suspended many liberties. Lincoln went far beyond Bush -- suspending the writ of habeas corpus, imposing martial law and so on. His legal basis for doing so was limited, but in his judgment, the survival of the United States required it.

Obviously, George W. Bush is no Lincoln. Of course, it must be remembered that during the Civil War, no one realized that Abraham Lincoln was a Lincoln. A lot of people in the North thought he was a Bush. Indeed, had the plans of some of his Cabinet members - particularly his secretary of war -- gone forward after his assassination, Lincoln's suspension of civil rights would be remembered even less than it is now.

The trade-off between liberty and security must be debated. The question of how you judge when a national emergency has passed must be debated. The current discussion of NSA data mining provides a perfect arena for that discussion. We do not have a clear answer of how the debate should come out. Indeed, our view is that the outcome of the debate is less important than that the discussion be held and that a national consensus emerge. Americans can live with a lot of different outcomes. They cannot live with the current intellectual and political chaos.

Civil libertarians must not be allowed to get away with trivializing the physical danger that they are courting by insisting that the rules of due process be followed. Supporters of the administration must not be allowed to get away with trivializing the threat to liberty that prosecution of the war against al Qaeda entails. No consensus can possibly emerge when both sides of the debate are dishonest with each other and themselves.

This is a case in which the outcome of the debate will determine the course of the war. Leaks of information about secret projects to a newspaper is a symptom of the disease: a complete collapse of any consensus as to what this war is, what it means, what it risks, what it will cost and what price Americans are not willing to pay for it. A covert war cannot be won without disciplined covert operations. That is no longer possible in this environment. A serious consensus on the rules is now a national security requirement.

Send questions or comments on this article to analysis@stratfor.com.

ATTACHMENT 11

Pick-up City: Pick-up: Jun

<http://www.latimes.com/news/opinion/commentary/la-oe-boot17may17,1,3079403.column?coll=la-util-op-ed&ctrack=1&cset=true>
From the Los Angeles Times

MAX BOOT

Max Boot: Forget privacy, we need to spy more

Electronic surveillance is a key weapon in the war on terror. Don't handcuff the president and the NSA.
Max Boot

May 17, 2006

PRETTY MUCH everyone agrees that our human-spy capacity is missing in action. The chances that a CIA agent will be in the same cave as Osama bin Laden when the next 9/11 is being plotted are vanishingly small. The chances that our porous border security or transportation security will stop the next gang of Islamist cutthroats aren't much better. It's simply impossible to protect every inviting target in a continent-sized nation of almost 300 million people.

When it comes to the war on terror, the biggest advantage we have comes from our electronic wizardry. The National Security Agency has its share of problems, but it has long been the best in the business at intercepting and deciphering enemy communications. Until now. If civil liberties agitators, grandstanding politicians and self-righteous newspaper editorialists have their way, we will have to give up our most potent line of defense because of largely hypothetical concerns about privacy violations.

Assorted critics, taking a break from castigating the Bush administration for doing too little to protect the homeland, are now castigating it for doing too much. How dare the NSA receive without benefit of a court order telephone logs from AT&T, BellSouth and Verizon? Even though the records were anonymous and did not include the contents of any calls (Verizon and BellSouth have now denied offering any information at all), hyperventilating worrywarts fret that fascism has descended.

Qwest is supposed to be the hero of this drama for having, in USA Today's words, "the integrity to resist government pressure." That is not a compliment often paid to a company that has been accused of massive fraud and whose former chief executive is charged with 42 counts of insider trading. Maybe Qwest should celebrate by launching an advertising campaign touting itself as the preferred telecom provider of Al Qaeda.

All this concern with privacy would be touching if it weren't so selective. With a few keystrokes, Google will display anything posted by or about you. A few more keystrokes can in all probability uncover the date of your birth, your address and telephone number and every place you have lived, along with satellite photos of the houses and how much

you paid for them, any court actions you have been involved in and much, much more.

It is only a little more work to obtain your full credit history and Social Security number. Or details of your shopping, traveling and Web-browsing habits. Such information is routinely gathered and sold by myriad marketing outfits. So it's OK to violate your privacy to sell you something — but not to protect you from being blown up.

HOW FAR DO the civil-liberties absolutists want to take their logic? Will troops in Afghanistan and Iraq soon have to read Miranda warnings to captured suspects and apply for a court's permission before searching a terrorist safe house? Or do such niceties stop at our borders, thereby giving Al Qaeda and its ilk the freedom to operate unhindered only in the U.S.?

Much of this silliness can be traced to the 1978 Foreign Intelligence Surveillance Act, which for the first time made judges the overseers of our spymasters. This was an understandable reaction to such abuses as the FBI's wiretapping of the Rev. Martin Luther King Jr. But FISA is a luxury we can no longer afford. Were it not for FISA's high standard of "probable cause," the FBI could have examined Zacarias Moussaoui's laptop in August 2001 and perhaps saved 3,000 lives. The Patriot Act scaled back some FISA provisions, such as the "wall" between intelligence and law enforcement agents, but enough remain intact to raise unnecessary questions about the legality of some much-needed homeland security measures.

This archaic law should be euthanized. Replace it with legislation that gives the president permission to order any surveillance deemed necessary, subject to only one proviso: If it is later determined that an intelligence-gathering operation was not ordered for legitimate national security objectives — if, for instance, it was designed to gather dirt on political opponents — then the culprits would be punished with lengthy prison sentences. Given that our intelligence bureaucracy leaks like a sinking ship, it is a safe bet that any hanky-panky would become front-page news faster than you can say "Pulitzer Prize."

So far there has been no suggestion that the NSA has done anything with disreputable motives. The administration has nothing to be ashamed of. The only scandal here is that some people favor unilateral disarmament in our struggle against the suicide bombers.

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PARTNERS:



ATTACHMENT 12

Action urged as US civil liberties board convenes

By Caroline Drees, Security Correspondent

600 words

28 May 2006

08:41

Reuters News

English

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WASHINGTON, May 26 (Reuters) - The White House's new civil liberties board is just getting to work more than a year after it was ordered by Congress, dogged by criticism that it must act more quickly and forcefully to protect Americans' rights in the war against terrorism.

The nascent Privacy and Civil Liberties Oversight Board, whose members were picked by President George W. Bush a year ago, has held four formal meetings since being sworn in on March 14 and has met top officials and prominent privacy and civil liberties advocates over the past two months.

"Right now, there's a lot of consultation, coordination, outreach and taking stock of issues and trying to figure out how to be as useful as possible," said the board's vice chairman, Alan Raul, a lawyer specializing in privacy issues.

The White House Web site says the five-member board's office space is under construction and it is hiring staff.

Some critics and rights advocates say progress has been unsatisfactory considering the need for oversight of post-Sept. 11 government policies, such as eavesdropping on U.S. citizens' international telephone calls and e-mails.

"We haven't heard a peep from them on these incredibly important issues of privacy and civil liberties, for example warrantless wiretapping and unrestrained data mining," said Richard Ben-Veniste, a Democratic member of the former Sept. 11 Commission, which originally called for the board's creation.

"One gets the sense that while they are securing office space and hiring employees, they are folding table napkins while the ship of state has hit an iceberg," he said.

WAR ON TERRORISM

The intelligence reform law of December 2004 called for the oversight board amid concerns new powers given the government for the fight against terrorism were eroding civil liberties.

The White House has said the board will address such concerns and have the resources and authority to do the job.

Panel members have met top officials including National Security Adviser Stephen Hadley and Gen. Michael Hayden, the architect of the wiretapping program, whom the Senate confirmed as the new CIA chief on Friday.

"We're just getting started, getting into these issues. So it remains to be seen how deeply we're going to be allowed to explore all of them," said Lanny Davis, the board's only prominent liberal.

The White House would not say what security clearance level the board members have received to view classified information, nor what the panel's budget would be.

"It's a fledgling organization. They face a bureaucratic challenge of how to be effective when decisions were being made previously without their input," said Peter Swire, former chief privacy officer in the Clinton administration, who met with board chairwoman Carol Dinkins and Raul.

Leslie Harris, executive director of the Center for Democracy and Technology advocacy group, who has also met with the board, said she had hopes for the panel, but it was not yet clear whether the members had sufficient authority.

"I don't think they can make people do things. They can advise, educate, report," Harris said.

Tim Sparapani, legislative counsel at the American Civil Liberties Union, which also met with the board, said he applauded the initial efforts, but "action has to be taken. They need to announce they're investigating something. Delay is not the friend of privacy or civil liberties in this administration right now."

ATTACHMENT 13

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SECRECY NEWS

from the FAS Project on Government Secrecy Volume 2006, Issue No. 55
May 8, 2006

CIVIL LIBERTIES AS AN ANTIDOTE TO VIOLENT EXTREMISM

It is often asserted or assumed that American traditions of open government and civil liberties place the United States at a disadvantage in confronting terrorism. But the opposite may be closer to the truth.

"In an open society like ours... it is impossible to protect against every threat," said President Bush in an August 24, 2005 speech. "That's a fact we have to deal with. In a free society it is impossible to protect against every possible threat," implying that it might be possible in a closed or unfree society.

Similarly, according to February 15 testimony by Secretary of State Condoleezza Rice, "terrorists and criminals... would exploit our open society to do us harm."

And "precious little can be done to prevent [terrorist attacks on soft targets] in a society like ours that rightly values personal liberty so highly," wrote Clark Kent Ervin, former Homeland Security Inspector General, in a Washington Post opinion piece on May 7.

But a distinctly different perspective was offered by John C. Gannon, former CIA Deputy Director for Intelligence, in testimony before the Senate Judiciary Committee last week.

Among the reasons that there has not been another terrorist attack on U.S. soil since September 11, he proposed, are precisely the openness and freedom that some others view with anxiety.

"I believe that the hard-won Constitutional freedoms enjoyed by Americans, along with our unparalleled commitment to civil liberties embedded in law, work against the development of domestic terrorist networks that could be exploited by foreigners," testified Gannon, who is now a Vice President at BAE Systems Information Technology.

http://www.fas.org/irp/congress/2006_hr/050206gannon.html

Secrecy News asked Dr. Gannon to elaborate on this point.

"Americans have unparalleled Constitutional and legal protections to express grievances and to openly criticize government at all levels," he replied in a May 6 email message.

"This doesn't mean that terrorists wouldn't try to operate here. It means that the terrorists or other extremists would find less fertile ground to build networks in the US because local support would be harder to come by and because local opposition would be more certain."

"In this sense, our liberties are a powerful antidote to violent extremism."

"This is not an academic point for me. It is an observation from a career of watching the domestic consequences of repressive regimes elsewhere in the world--including US-friendly Islamic governments such as Saudi Arabia and Egypt," Gannon wrote.

The question of whether openness and civil liberties tend to enhance national security or to undermine it is not a theoretical one. Much depends on which one of the two perspectives prevails.

If openness and the rule of law are sources of vulnerability, or viewed as such, then they will be quickly surrendered in the name of security. Torture may be redefined to permit non-lethal abuses, habeas corpus may be suspended, statutes regulating domestic surveillance may be disregarded.

Conversely, if civil liberties and the rule of law are a source of strength, it follows that they should be bolstered and scrupulously upheld even in the conduct of vital security operations.

Secrecy News asked Dr. Gannon whether his views on civil liberties could be reconciled with intelligence programs such as warrantless domestic surveillance.

"The NSA warrantless surveillance program--the details of which are mired in secrecy--should not be seen as a tradeoff between security and civil liberties. But, for this to be true, the program must be bound by law and subject to both judicial review and competent Congressional oversight--the latter now in short supply," he explained.

"I believe our democracy has the instruments to advance security and protect civil liberties at the same time," he said.